

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12788 of SND Development Corporation, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 4101.44 to permit the use of the second, third and fourth floors of the subject premises as professional offices, including a real estate brokers office and pursuant to Paragraph 8207.11 for a variance from the parking requirements (Section 7201) in the SP-2 District at the premises 509 E Street, N.W., (Square 488, Lot 804).

HEARING DATE: January 17, 1979
DECISION DATE: February 28, 1979

FINDINGS OF FACT:

1. The subject property is located on the north side of E Street, N.W., between Fifth and Sixth Streets. It is known as 509 E Street, N.W. and is in an SP-2 District.

2. Square 488, in which the subject building is located, is in the immediate vicinity of Judiciary Square. The old Criminal Appeals Court is located immediately to the east and commercial buildings in the C-4 zone to the west. The area is presently in a state of transition. Several buildings in the subject square have been converted to SP office use. The subject building fronts on E Street along with one other building (511 E Street) having similar architecture and which is being used as law offices. The Salvation Army building is located at the corner of 5th and E Streets.

3. The subject building is four stories high. The top three floors of the building are vacant. The first floor is being used for a carry-out restaurant, which use was approved by the Board of Zoning Adjustment under Order No. 12458, dated August 22, 1977. A Certificate of Occupancy was issued in 1953 which allowed the total building to be used as a lodging house. The dwelling contained thirty one rooms. The top three floors of the building have been vacant for approximately twenty years.

4. The applicant proposes to use the second, third and fourth floors of the subject building as professional offices, including a real estate broker's office. There will be no changes made in the height and bulk of the existing structure. The outside facade will be renovated.

5. This applicant had a prior application before the BZA under the same application number as the subject application. In the prior application the applicant sought to use the second floor of the subject premises as law offices. At the Public Hearing of November 15, 1978 permission was granted by the Board to amend the application to seek the relief now being requested. The application was readvertised.

6. The subject existing building covers most of the subject lot. It is not possible to provide any parking spaces on the site.

7. By memorandum, dated November 20, 1978, the Department of Transportation reported it would support any parking variance for the subject building because of the abundance of parking already in the area. There are four one-hour limit on-street parking spaces available on the north side of E Street and two spaces available on the south side of E Street between 9:30 a.m. and 4:30 p.m. There is also an ample supply of commercial parking in the area. Because the subject building is located near two Metrorail Stations, and on a street with Metrobus service, DOT did not anticipate measurable adverse traffic impact as a result of the proposed development. The Board so finds.

8. The Office of Planning and Development, by report dated January 9, 1979 recommended that the application be approved. It was of the opinion that the preservation of the existing structure and its conversion to professional offices will be consistent with land uses existing in the immediate area. The proposed conversion and professional use will also reflect such uses encouraged in the Judiciary Square Master Plan and will be consistent with the land use objectives for the SP-2 District. OPD also reported that given the mixed commercial office character of the neighborhood, the availability of off street parking and metro service in the surrounding area, it is unlikely that the proposed use will become objectionable or have an adverse impact on the environment or neighboring properties. The Board so finds except as to the use of a real estate office which will be discussed below.

9. Advisory Neighborhood Commission 2C made no recommendation on the application.

10. There was no opposition to the application.

11. Sub-section 7201.2 of the Zoning Regulations of the District of Columbia states:

When the use of a structure is changed to another use which requires more parking spaces than required for the use existing immediately prior to such change or, if the structure is vacant, the use which existed immediately prior to such vacancy, parking spaces shall be provided for the additional requirement in the amount necessary to conform to Section 7202....

The use of the structure is to be changed from its last prior use as a Lodging house (Certificate of Occupancy No. A22292, August 7, 1953), into professional offices. The Inspection Report for issuance of the certificate, (report dated July 1, 1953) indicates that there were thirty-one rooms on four floors, four on the first floor and twenty-seven rooms on the three floors above, at nine per floor. Section 7202 no longer contains a category "Lodging house", the most similar current category being "Rooming house". The parking requirement for rooming houses is one parking space for each five guest bedrooms. Therefore the prior use required five spaces for the second, third and fourth floors. There are 1,950 gross square feet on the second, third and fourth floors, and 304 gross square feet on the first floor that will be converted to office use, for a total of 6,170 gross square feet for the new use. Section 7202 requires parking for general office use in the SP-2 District as follows:

No requirement for the first 2,000 square feet of gross floor area; in excess of 2,000 square feet of gross floor area as follows: One for each 1,800 square feet of gross floor area....

The proposed use, therefore, requires two spaces.

Since five parking spaces were required for the three floors used as a lodging house and only two spaces would be required for the proposed use as professional offices no additional parking must be provided pursuant to Article 72 of the Zoning Regulations, and no variance is thus required.

12. The applicant testified that he wished to use one room of the proposed law offices as a real estate office. He argued that a real estate office is a professional office since real estate brokers are required to receive special education and that they are licensed. Accordingly, as a professional office it is a use permitted under Paragraph 4101.35 of the Zoning Regulations. The Board has had the occasion to discuss and determine this issue in Appeal No. 12845. In that appeal which was an appeal from the decision of the Zoning Administrator that the use of an office in an SP-2 office building for a consulting firm/lobbyist is not a "similar professional use" under Paragraph 4101.35 of the Zoning Regulations, the Board denied the Appeal and upheld the decision of the Zoning Administrator. The Board concurred in the three criteria set by the Zoning Administrator for what constituted a "similar professional person". The criteria were 1. ethical standards, 2. professional licensing and 3. professional education. As to ethical standards, the professional person must be controlled by a code of ethics and principles of practice through a professional organization such as the American Institute of Architects, the American Medical Association, the Bar Association, etc. A professional person would be accountable for his/her actions to such an organization. As to the second criteria, professional licensing, all professionals listed in Paragraph 4101.35 of the Zoning Regulations are licensed by the District of Columbia and the District of Columbia may hold the licensee accountable for any malpractice. The criteria of professional education was not discussed in the Appeal.

In the subject application it is true that a real estate broker is licensed by the District of Columbia and under such licensing is subject to a certain degree of control for his/her ethical conduct. The broker's conduct, however, is not controlled through a professional organization with a code of ethics and established principles of practice for all its members. As to the criteria of professional education the Board finds that regardless that an individual broker may have a professional liberal education the said broker receives no professional degree for real estate broker ~~inse~~. The education received is of a special nature and

limited in time and scope. Accordingly, the Board finds that the criteria of ethical standards and professional education have not been met for that part of the application based on the use of the subject property for a real estate broker.

The Board also notes that in BZA Order Nos. 10363 and 10433, dated May 19, 1970 and July 21, 1970, the Board denied the use of an SP office building for the use of an economic consultant as a use not in keeping with the letter, intent and purpose of the SP Districts.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant has met the requirements of Paragraph 4101.44 of the Zoning Regulations in that the use, height, bulk and design of the proposed professional offices are in harmony with existing uses and structures on neighboring property and the use will not create dangerous or other objectionable traffic conditions. The Board further concludes that the special exception to permit professional offices is in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property.

The use of any part of the proposed professional offices as a real estate office is denied since such use is not a use permitted under Paragraph 4101.44 for the reasons stated in Findings of Fact number twelve.

A variance from the parking requirements (Section 7201) is not required for the reasons stated in Findings of Fact number eleven.

Accordingly, it is ORDERED that the use of the second, third and fourth floors of the subject premises as professional offices is GRANTED SUBJECT to the CONDITION that the office uses be limited to professional office uses consistent with the SP Districts and

Permission to use any part of the subject premises as a real office is DENIED.

VOTES: (5-0) As to the use of the subject premises as professional offices: (Chloethiel Woodard Smith, Charles R. Norris, Theodore F. Mariani, William F. McIntosh and Leonard L. McCants to grant).

(5-0) As to the use of part of the premises as a real estate office (Theodore F. Mariani, Charles R. Norris, Chloethiel Woodard Smith, William F. McIntosh and Leonard L. McCants to deny).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER : 21 MAR 1979

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.